IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.599 OF 2005

Bimal V. Bhatt)
Age 49, Occ. Advocate)
Residing at Vatsa House,)
Janmabhoomi Marg, Fort,)
Mumbai 400 001.)...Petitioner
(Accused No.2)

Versus

State of Maharashtra)
(General Branch Crime Branch)
CID Mumbai.)...Respondent

Mr.E.P.Bharuch with Manish Desai i/b M/s. Paras Kuhad & Associates, Advocates for Petitioner.

Mr.I.S.Thakur, APP for the Respondent

WITH

CRIMINAL WRIT PETITION NO.600 OF 2005

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WITH

CRIMINAL WRIT PETITION NO.601 OF 2005

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Versus

State of Maharashtra)
(General Branch Crime Branch)
CID Mumbai.)...Respondent

Mr.Abhay Nevgi i/b M/s. Paras Kuhad & Associates, Advocate for the Petitioner

Mr.I.S.Thakur, APP for the Respondent

CORAM : R.M.S.KHANDEPARKAR &

P.V.KAKADE, JJ.

DATE : 2ND MAY, 2005.

ORAL JUDGMENT : (Per Khandeparkar, J.)

1. Heard. In all these petitions the petitioner seeks to quash the proceedings in Criminal Case Nos.89/P/2000, 89/B/P/2000 and 89/A/P/2000 pending in

the Court of the learned Metropolitan Magistrate, 19th Court, Mumbai on the ground of delay of about 18 years in disposing the said cases. Since the common questions of law and facts arise in all these petitions they were heard together and are being disposed of by this common judgment.

2. Rule, and by consent the rule is made returnable forthwith in all these petitions.

3. Few facts relevant for the decision are that the petitioner was one of the Director of National Cooperative Bank Ltd. and is the original accused no.2 along with his father V.D.Bhatt in those cases. The accused No.1 expired during the pendency of the proceeding some time in the year 1995. Some time in the year 1991 petitioner filed applications for discharge on the ground that the material placed on record were not sufficient to establish the allegations against him. When the said applications were being heard on 22.2.1994 in the court of the Metropolitan Magistrate, the learned APP requested for an order for further investigation in terms of Section 178(3) of the Criminal Procedure Code and the same was granted. It is the case of the

petitioner that by application dated 3.3.2001 it was brought to the notice of the learned Magistrate that the Investigating Officer had not yet filed any report in relation to the investigation which was carried out pursuant to the permission granted under Section 178(3) of Cr.P.C. While the said application was under consideration, the present writ petition came to be filed in February 2001. It is also undisputed fact that the learned Magistrate by order dated 25.4.2005 had already disposed of the application for discharge holding that though no further report has been filed by the investigating agency, there is a prima facie case for framing of charge under Section 408, 467, 471, 477-A and 420 r/w 34 and Section 120-B of I.P.C. against the petitioner in all the three cases.

4. The learned advocates appearing for the petitioner relying upon the decision in the matter of - **Mahendra Lal Das vs. State of Bihar & Ors**. reported in **(2002) 1 SCC 149**, **P.Ramchandra Rao vs. State of Karnataka (2002) 4 SCC 578, State of U.P. vs. Parshottam** reported in **1991 Supp (2) SCC 124**, **Biswanath Prasad Singh vs. State of Bihar** reported in **1994 Supp (3) SCC 97, Mehmood Mirza vs. Assistant Collector of**

Customs (Preventive) Bombay & anr. reported in **1996 (2) Mh.L.J. 1031, Shaym Narayan Singh vs. State of Maharashtra & anr**. reported in **1994 Mh.L.J. 1015**, **C.O.Varghese vs. M.K.Singh & anr**. reported in **1997 (2) Mh.L.J. 243** submitted that inordinate delay has affected the right of the petitioner for speedy trial and there is no justification of continuing the prosecution against the petitioner. It is further contention on behalf of the petitioner that no truthful purpose will be served by prosecuting the petitioner on account of inordinate and unexplained delay caused in the matter.

5. There is no doubt that there is some delay in disposing the three criminal cases filed against the petitioner. However, it is now well settled that mere delay by itself does not give rise to the accused to contend that the prosecution against him must be quashed. Each case has to be decided on the facts of that case and taking into consideration the circumstances in which the delay, if any, has occurred. It was clearly held by the Apex Court in **C.B.I. vs Dr. Narayan Waman Nerukar** reported in **2002 AIR SCW 3484** that there can be neither, empirical formula of universal

application in such matters, nor any generalisation is possible, nor it should be done and each case has to be judged in its own background and special features if any.

6. In the case in hand the allegations against the petitioner are in the nature of falsification of the books of accounts and monetary loss to the financial institution. In one case the amount which is said to have been defaulted is to the extent of Rs.100,839/=, in another case it is Rs.33,750/= and in third case it is to the extent of Rs.90,246.56. There are also allegations of criminal breach of trust in relation to those amounts. Undoubtedly the FIR was lodged in the year 1984 and the charge-sheets were filed in the year 1986. The application for discharge was filed in the year 1991. In the course of the hearing of the said application the prosecution filed an application for leave to conduct further investigation and necessary leave in terms of Section 178(3) of Cr.P.C. was granted in the year 1994. No report regarding any such further investigation by the authorities was filed till March 2003. It was only in March 2003 that the Petitioner filed his application bringing the said fact to the

notice of the learned Magistrate and prayed for the discharge of the petitioner.

7. It is not in dispute that consequent to the permission granted for further investigation in exercise of powers under Section 178(3) of Cr.P.C., no grievance was made in that regard by the petitioner at any point of time. Even today there is no grievance against the said order. Only grievance which was sought to be made in the year 2001 was regarding failure to submit the report consequent to the permission granted for further investigation. In other words, there was no grievance on the part of the petitioner in relation to the order passed under Section 178(3) of Cr.P.C. permitting the investigating agency to conduct further investigation and further that even in the year 2001 when the application was filed the only grievance that was made was regarding failure on the part of the investigating agency to submit the report as regards the further investigation. In this background, it cannot be said that there has been inordinate delay affecting the right of the petitioner for speedy trial in the matter more particularly, considering the fact that the petitioner himself did not react at any point of time in any manner

to the order dated 22.2.1994 permitting further investigation and even in the application in the year 2001 grievance was restricted to the failure on the part of the investigating agency to submit the report consequent to further investigation. Once the petitioner himself had not reacted in any manner against the order of 1994 for permission to further investigation and the grievance having been made in 2001 related only to the failure on the part of the investigating agency to submit the report relating to such investigation, in our opinion, it cannot be said that the delay in disposal of the matters in hand can be said to be either oppressive or totally unwarranted.

8. It is also to be noted that the learned Magistrate by order dated 25.4.2005 has clearly arrived at the finding about the prima facie material available for framing of the charge under Section 408, 467, 468, 471, 477-A and 420 r/w 34 and Section 120-B of I.P.C. against the petitioner. It is pertinent to note that the said order has not been challenged before us. In these circumstances we do not find any substance in the grievance sought to be made regarding the delay.

9. The decision of the Apex Court in **Mahendra Lal Das's case** clearly supports the view that we are taking in the matter. The Apex Court therein has clearly ruled that "while determining the alleged delay, the court has to decide each case on its facts having regard to all attending circumstances including nature of offence, number of accused and witnesses, the workload of the court concerned, prevailing local conditions etc. Every delay may not be taken as causing prejudice to the accused but the alleged delay has to be considered in the totality of the circumstances and the general conspectus of the case. Inordinate long delay can be taken as a presentive proof of prejudice." In the case in hand as already observed above the only grievance made regarding delay is that the delay itself has resulted in prejudice to the petitioner. However, as already noted above, the facts of the case clearly disclose the reasons for delay and it is not the case of the petitioner that the reasons are not justifiable. Being so, it cannot be said that the delay does not stand explained. The explanation for delay need not be necessarily by filing an affidavit in that regard by the respondents. It can also be explained from the facts which are already on record.

10. The decision in **P.Ramchandra Rao's case** also justifies the view that we are taking in the matter. Therein the Apex Court while warning that the Criminal Courts are not obliged to terminate trial or criminal proceedings merely on account of lapse of time, had ruled that "the test is whether the proceedings or trial has remained pending for such a length of time that the inordinate delay can legitimately be called oppressive and unwarranted, as suggested in A.R.Antule." Considering the facts of the case in hand, it can hardly be said that the proceedings had remained pending without any justification as such. Undoubtedly there was an order passed in the year 1994 permitting the investigation agency to carry out further investigation and the order passed in terms of Section 178(3) of Cr.P.C. There has been no reaction against the said order on the part of the petitioner. That apart the grievance, which petitioner made in the year 2001, as already stated above, was regarding the failure on the part of the Investigating Agency to submit the report consequent to the further investigation. Being so, the delay which has been caused cannot be said to be the oppressive or unwarranted as such. Undoubtedly there

was failure on the part of the Investigation Officer to conduct the further investigation or to submit the report in that regard. However, at the same time the order passed by the learned Magistrate dated 25.4.2005 discloses a prima facie case based on the materials already on record for framing of necessary charges against the petitioner.

11. The decision of the Apex Court in **Parshottam's case** is of no help to the petitioner. In that case the offence was registered on 31.12.1958. The charge-sheet was filed on 20.11.1959. The Special Magistrate framed the charge against the accused persons on 10.11.1976. The accused had preferred revision application before the High Court against the framing of charge. The High Court by its judgment dated 27.7.1977 while setting aside the order framing the charge had remanded the matter to the Special Magistrate with a direction that he should frame two charges and split the case into two trials as indicated in the judgement of the High Court. The said judgment of the High Court was sought to be challenged by the appeal by the State of U.P. In fact mere reference to the various dates quoted above sufficiently disclose justification for quashing the

proceedings. The Apex Court clearly observed therein that "the case was registered 30 years back. Thereafter it took 17 years to frame the charges. Even the judgment of the High Court was delivered about 13 years back." Apparently the decision was delivered in the peculiar facts of the case.

12. In **Biswanath Prasad Singh's case** the employee of Bihar State Cooperative Marketing Union was found involved in the offence under Section 408 and some other offences. The employee was suspended pending the enquiry on 2.7.1977. In the year 1978 he was dismissed from service. In normal circumstances he would have attained the age of superannuation in the year 1989. The FIR was lodged on 10.12.1977. The accused surrendered to the Court in January 1978. The charge-sheet was filed on 9.2.1983, after the lapse of more than 5 years from the date of lodging of the FIR. The charges were framed by the Court on 25.4.1989, six years after filing of the charge-sheet. The accused approached the Patna High Court for quashing of the criminal proceedings. The Petition was dismissed by the High Court. The matter was carried to the Apex Court. Meanwhile the prosecution had already closed its

evidence. The Apex Court while observing that even though the FIR was issued on 10th December, 1977 the charge-sheet was filed only on 9.2.1983 after the lapse of 5 years and that there was no explanation forthcoming for inordinate delay and even though there was no stay during the course of Special Leave Petition, the case had not progressed much further. Besides, the appellant was already dismissed from service on the very allegation in respect of which the criminal case was filed. It was held that "for the above reasons, we are of the opinion that the appellant’s right to speedy trial has been infringed in this case and for that reason, the prosecution launched against the appellant is liable to be quashed and is quashed herewith."

13. Obviously the said decision was delivered in the peculiar facts of the case and more particularly because there was absolutely no justification for delay of five years in filing the charge-sheet after recording the FIR and that the person against whom the criminal proceedings were initiated was already dismissed from service for the very reason for which the prosecution was launched, besides that inspite of the absence of any stay of the proceedings, the prosecution could not make

any further progress in the trial before the concerned court. In those peculiar facts, the Apex Court had held that right for speedy trial was infringed. Apparently the facts of the said case are totally different from the facts of the case in hand. In the case before the Apex Court in **Biswanath Prasad Singh**, the employee who was to retire in the normal course in the year 1989 however his services were already terminated in the year 1978 on the charge of misappropriation established in the disciplinary proceedings. Undoubtedly the criminal proceedings can also be initiated for such acts and they were in fact initiated; however there was inordinate unexplained delay in filing the charge-sheet itself for a period of more than five years. In the background of those facts and that the person was already penalised having lost his service nearly 11 years prior to the date of his retirement and with a stigma of having been guilty of misconduct, the Apex Court held that there was infringement to his right to speedy trial in the case of criminal prosecution. The facts are totally different from the facts of the case in hand and the decision is of no help to the petitioner to contend that his rights are also affected on account of mere delay in disposal of the proceedings.

14. As regards the other decisions in fact it is not necessary to refer to them, as all those decisions are delivered by the learned single judges and those decisions are not binding upon this court. However, even those decisions are of no help to the petitioner in the present case in hand. In **Mirza's case** the accusation against him related to the offences under Dangerous Drugs Act and related to the date of 25.6.1978. It is not known as to when the complaint was filed, however, by Order dated 28.10.1998 one of the accused was discharged while the charges were framed against two others. The accused no.2 therein had preferred Criminal Revision Application before the Sessions Court, which was rejected by the Sessions Court on 22.1.1989. The matter was carried in writ petition and the learned Single Judge held that there was a delay of 18 years and therefore, it had amounted to in deprivation of fundamental right guaranteed under Article 21 of the Constitution of India. It is observed therein that a citizen cannot be kept on hanging for an indefinite period and time; that the petitioner waiting for 18 years, the delay has resulted in infringement of his right. Obviously, the prosecution was quashed only

on the ground that there was delay of 18 years. We are unable to pursued ourself to agree with the said view, as the decision of the Apex Court in **Mahendra Lal Das's case** is clearly to the effect that while determining the issue relating to delay, the court has to decide each case on its facts having regard to all attending circumstances.

15. In **Sham Narayan Singh's case** the very first sentence of the judgement would be sufficient to distinguish the said decision from the facts of the case in hand. It reads thus - "it is conscionable for the State to commence criminal proceedings against a subordinate employee of the Telephone Department in the year 1978, carry on investigations for three years and thereafter suspend him in a state of limbo with no end in sight to the proceedings even in mid 1993, after the lapse of 15 years?" It is further observed that "Round one of the litigation is yet to commence, leave alone conclude, and the inevitable appeal which is bound to follow, since the State invariably challenges even orders of acquittal, would take the proceedings well into the next century." However, it appears that the learned Single Judge of this Court had quashed the

proceedings mainly laying down the proposition that "if a man is put on trial on a charge that is ten or twenty years old he is gravely handicapped in his defence while meeting that charge and at the same time would probably not be able to lay hands on witnesses or material that may be required but which is no longer available." With utmost respect we are unable to pursued ourself to agree with this proposition. As already observed above each case will have be decided on the facts of that case taking into consideration the attending circumstances as has been ruled by the Apex Court in **Dr.Narayan W.Nerukar** and **Mahendra Lal Das cases**. There cannot be a general proposition of law as such to the effect that mere delay itself would result in hardship or would cause prejudice to the accused in laying his hands on the witnesses or material which may be required in his defence. It would depend upon the facts of each case which will have to be established by the party making grievance about the delay.

16. In **C.O.Varghese's case**, it was a case of filing the complaint itself after the lapse of five years and without any explanation. The learned single judge therein has clearly observed that " However, Mr. Ponda,

the learned Advocate for the accused strongly urged that there was inordinate and gross delay of five years in filing the complaint and on that count itself the complaint is liable to be quashed." The learned Single Judge has also observed therein that "if the accused within one year from the offence could be dealt with in a departmental enquiry and terminated from service then everything that was necessary for filing a complaint was available with the bank by January 1985. If at all bank required sanction of any superior then sanction could have been obtained within a month or so, but there is absolutely no satisfactory explanation for the delay of five years for filing a complaint." The facts of the said case were almost on par with those of the case in **Biswanath Prasad Singh's case** (supra). Being so, the said decision is also of no help to the petitioner for seeking to quash the proceedings in the case in hand.

17. It was also sought to be argued that the petitioner is a practising advocate and no fruitful purpose will be served by compelling him to face the criminal proceedings and more particularly the amount involved being not a very large amount. As regards the contention that the amount is not a large amount, it is

too premature to make any observation in that regard. If the amount is misappropriated and if the charge is established certainly, apart from the punishment that may be imposed, action can be taken to recover the said amount from the party and in that case the liability may not be restricted to the extent of the said amount itself may also include the interest thereon.

18. Merely because the accused person happens to be from any profession or that the person occupies high position in the society, that by itself cannot be a justification to contend that no purpose would be served by prosecuting such person on account of delay in proceedings. The infringement of right on account of delay has essentially to be considered bearing in mind the law laid down by the Apex Court in **Dr.Narayan W. Nerukar** and **Mahendra Lal Das cases**. Whether such delay has affected the right of the accused would depend on various circumstances including the nature of offence, number of accused and witnesses, the workload of the court concerned, prevailing local conditions etc. So such circumstances have been established in the cases in hand. It is not the mere status of the accused in the society that is relevant for deciding about infringement

of his right on account of delay in disposing the criminal proceedings.

19. In the absence of any case being made out for quashing the proceedings, the petition is liable to be dismissed. However, as already noted above undoubtedly there is some delay in disposing the matter. Considering the fact that the cases relate to the year 1986, the court below is expected to dispose of the matters as expeditiously as possible and in any case before 31st December, 2005 without fail and to file the compliance report in that regard in this Court in the first fortnight of January 2006.

20. The learned advocates for the petitioner have submitted that the petitioner wants to file review/revision application against the order of framing the charge. Needless to say that if the petitioner files any such application, the court dealing with the same need not get influenced by any of the observations made herein, which are essentially pertaining to the issue relating to the delay in disposing the criminal proceedings.

(R.M.S.Khandeparkar, J.)

(P.V.Kakade, J.)